

## Federal Reserve System

## § 225.7

federal or state supervisor of the subsidiary bank of the bank holding company or of the branch or agency of the foreign bank.

### § 225.6 Penalties for violations.

(a) *Criminal and civil penalties.* (1) Section 8 of the BHC Act provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual, of the BHC Act or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a bank holding company.

(2) Civil money penalty assessments for violations of the BHC Act shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of the BHC Act, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

### § 225.7 Exceptions to tying restrictions.

(a) *Purpose.* This section establishes exceptions to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971, 1972(1)). These exceptions are in addition to those in section 106. The section also restricts tying of electronic benefit transfer services by bank holding companies and their nonbank subsidiaries.

(b) *Exceptions to statute.* Subject to the limitations of paragraph (c) of this section, a bank may:

(1) *Extension to affiliates of statutory exceptions preserving traditional banking relationships.* Extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement that a customer:

(i) Obtain a loan, discount, deposit, or trust service from an affiliate of the bank; or

(ii) Provide to an affiliate of the bank some additional credit, property, or service that the bank could require to be provided to itself pursuant to section 106(b)(1)(C) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(1)(C)).

(2) *Safe harbor for combined-balance discounts.* Vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank (eligible products), if:

(i) The bank offers deposits, and all such deposits are eligible products; and

(ii) Balances in deposits count at least as much as nondeposit products toward the minimum balance.

(3) *Safe harbor for foreign transactions.* Engage in any transaction with a customer if that customer is:

(i) A corporation, business, or other person (other than an individual) that:

(A) Is incorporated, chartered, or otherwise organized outside the United States; and

(B) Has its principal place of business outside the United States; or

(ii) An individual who is a citizen of a foreign country and is not resident in the United States.

(c) *Limitations on exceptions.* Any exception granted pursuant to this section shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a bank to operate under any exception granted pursuant to this section shall terminate upon a finding by the Board that its exercise of this authority is resulting in anti-competitive practices.

(d) *Extension of statute to electronic benefit transfer services.* A bank holding company or nonbank subsidiary of a bank holding company that provides electronic benefit transfer services shall be subject to the anti-tying restrictions applicable to such services set forth in section 7(i)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2016(i)(11)).

(e) For purposes of this section, *bank* has the meaning given that term in section 106(a) of the Bank Holding Company Act Amendments of 1970 (12

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U.S.C. 1971), but shall also include a United States branch, agency, or commercial lending company subsidiary of a foreign bank that is subject to section 106 pursuant to section 8(d) of the International Banking Act of 1978 (12 U.S.C. 3106(d)), and any company made subject to section 106 by section 4(f)(9) or 4(h) of the BHC Act.

### § 225.8 Capital planning.

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain bank holding companies.

(b) *Scope and effective date.* (1) This section applies to every top-tier bank holding company domiciled in the United States:

(i) With average total consolidated assets of \$50 billion or more. Average total consolidated assets means the average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y-9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y-9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y-9C, for the most recent quarter or consecutive quarters. Average total consolidated assets are measured on the as-of date of the most recent FR Y-9C used in the calculation of the average; or

(ii) That is subject to this section, in whole or in part, by order of the Board based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(2) Beginning on December 23, 2011, the provisions of this section shall apply to any bank holding company that is subject to this section pursuant to paragraph (b)(1), provided that:

(i) Until July 21, 2015, this section will not apply to any bank holding company subsidiary of a foreign banking organization that is currently relying on Supervision and Regulation Letter SR 01-01 issued by the Board (as in effect on May 19, 2010, available at <http://www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm>); and

(ii) A bank holding company that becomes subject to this section pursuant to paragraph (b)(1)(i) after the 5th of January of a calendar year shall not be subject to the requirements of paragraphs (d)(1)(ii), (d)(4), and (f)(1)(iii) of this section until January 1 of the next calendar year.

(3) Notwithstanding any other requirement in this section, for a given capital plan cycle (including the January 5 submission of a capital plan under paragraph (d)(1) of this section and any resubmission of the capital plan under paragraph (d)(4) of this section during the capital plan cycle), a bank holding company's estimates of its pro forma regulatory capital ratios and its pro forma tier 1 common ratio over the planning horizon shall not include estimates using the advanced approaches if the bank holding company is notified on or after the first day of that capital plan cycle (October 1) that the bank holding company is required to calculate its risk-based capital requirements using the advanced approaches.

(4) Nothing in this section shall limit the authority of the Federal Reserve to issue a capital directive or take any other supervisory or enforcement action, including action to address unsafe or unsound practices or conditions or violations of law.

(c) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 225, appendix G, and 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(2) *Capital action* means any issuance of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(3) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio,